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ABSTRACT

This paper addresses the difficult issues of balancing faculty and university rights and responsibilities regarding courseware and courseware modules developed as both commissioned and non-commissioned works. The ways in which this debate affects those who are engaged in building their own online courses for their universities, courseware development as consulting practice, and work for universities as faculty development Web development experts are addressed. First, the paper examines some of the concerns that are raised initially as one considers courseware copyright policies, then the attention turns to more deeply understanding three contexts in which courseware copyright policies are either being considered or have recently been passed into campus legislation. Finally, the concerns that evolve from that deeper understanding of these new policies are reconsidered. (Contains 20 references.) (Author/AEF)

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# Courseware & Copyright: Who's Rights Are Right?

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**Short Description**

This session addresses the difficult issues of balancing faculty and university rights and responsibilities regarding courseware and courseware modules developed as both commissioned and non-commissioned works. The ways in which this debate affect those who are engaged in a) building their own online courses for their universities; b) courseware development as consulting practice, and c) work for universities as faculty development web development experts will be addressed.

**Introduction**

The application of the web to higher education has brought with it many new and, at moments, disturbing systemic impacts that significantly effect the work of instructional design faculty and instructional designers in higher education. On-line learning is a considerably different approach to higher education (Daniel, 1996; Gubernick & Ebeling, 1997; Hall, 1995; Chea, 2000) and creates important new challenges including what counts as digital courseware, how is courseware different from textbooks, who owns courses that are designed for online learning, under what circumstances, and who controls those courses into the future? Most of these questions have been dealt with substantially through a number of publications of policies for various institutions (University of Wisconsin, 1997; University of Pennsylvania, 1997; University of Texas System, 1998; University of Illinois, 1999; University of California, 1999; University System of Maryland, 2000; Penn State, 2000) and through a number of think tank reports (CETUS, 1997; AAU, 2001; Twigg, 2000; AAUP). While a good deal of work has already been accomplished examining courseware and copyright issues, none has linked these questions and policy discussions specifically to the work of instructional designers.

Thus this work is an extension of the work begun by many policy makers, administrators, lawyers, faculty members, and intellectual property scholars. Specifically, this paper will look at the potential impacts of a variety of copyright issues on the work that instructional designers do—particularly in the online educational development enterprise.

There are two primary roles that instructional designers hold in the university, as service professionals and as faculty. As instructional design professionals, the impact of policies, which may serve to encourage or discourage faculty participation in the creation of online courseware may have broad and sweeping impacts. For the first time since the inception of the field, courseware has brought the field of instructional design into the university administrations' radar screens. There is a sudden realization that in order to effectively move the traditional face-to-face course, which always required a human professor to make the pedagogical connection to extant materials (Hiltz & Wellman, 1997; Twigg, 2000) into the digital format requires these people called instructional designers. This has been a serious boon for our field, although at times there is a perception of our academic programs as being primarily service oriented rather than content oriented or research based-- a common problem for our field addressed by Heinich (1984). If policies are formulated which intimidate or worry faculty, there is likely to be a chilling effect, and a lack of interest in pursuing the creation of courseware on the part of faculty. Without the faculty, who are essentially the SME's or content providers, the instructional designers would certainly have a difficult time putting courses online. And some would question the ethicality of pursuing online learning in the absence of generalized faculty support.

In addition, instructional design faculty members are very interested in many questions associated with the new online higher education enterprise. It is an opportunity for consulting as well as research and scholarship. Here again if policies constructed by the institutions are narrow in their understanding of the work that instructional design faculty do in this regard, they could find themselves asking permission for each project from upper administration and constantly defending their work in an effort to show it is not a conflict of interest or infringement of narrowly construed intellectual property, courseware or copyright policies. This paper considers the specifications of three policies being considered at three institutions: Wisconsin, Madison, University of Texas, and Penn State as examples and as a contextualized basis for further discussion of the potential impacts of such policies on our work as instructional designers and instructional design faculty.

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Instructional designers have been actively involved in design, development and delivery of online education, when building their own online courses for their universities; developing courseware as consulting practice, and/or serving as subject matter experts. Thus university courseware policies, both directly and indirectly, have significant impacts on instructional designers working in higher education. Considering the varied roles that instructional designers play in a university, we will be using university personnel in this paper to include faculty members, staff, and professionals engaged in courseware development. First we will examine some of the concerns that are raised initially as one considers courseware copyright policies, then we will turn our attention to more deeply understanding three contexts in which courseware copyright policies are either being considered or have recently been passed into campus legislation. Finally, we will reconsider the concerns that evolve from that deeper understanding of these new policies.

## CONCERNS

### Academic Freedom

Perhaps one of the most prevalent concerns voiced by faculty members in many subject areas is the extent to which the rules are somehow changing in this new technological world. Faculty are concerned that if courseware policies are passed, it may lead to infringements on academic freedom. These concerns actually take the form of several specific worries. First, faculty members are very concerned about their mobility as scholars, designers, and creators if university claims strong ownership and rights on courseware. If a faculty member leaves their home institution for another position, but their courses were online, to what extent will they be able to take their courses with them to their new place of employment? While it is clear that a faculty member takes their knowledge with them, and also that they would not be allowed to take the specific software solution designed for a given university with them, the questions of the gray areas are much more confusing. For example, let's suppose that a faculty member designs a course, an online course, with substantial support from their institution. They work with instructional designers, graphic artists, and software experts and create a really wonderful course that utilizes a very innovative *method* for delivering the instruction. The given method is the original idea of the faculty member, not the collaborative outcome of the work with instructional designers. The home institution could, under certain circumstances claim ownership over not only the specific course solution that was built utilizing their substantial resources, but also the innovation of the method itself, something that the faculty member originated and certainly planned to replicate perhaps in another medium at their new position.

### Control

Within the academic freedom area of concerns is another important general category—control. To what extent will the faculty member control the frequency, updating, and actual implementation of the course they have built. Here again, given certain policies, there is significant danger that courses will be under the control of administrators who may have more interest in profit than in fidelity to a given subject area. Faculty worry that their work may be changed without their approval, utilized without proper attribution, or offered far into the future under the direction of instructors without a significant commitment to the field being taught. Naturally, t is frightening to consider the possible replacement of professors with courseware without recognizing the creators, to use, modify, transfer or commercialize courseware without consultation with or permission from the original faculty authors (Farrell, 2001; Twigg, 2000; AAUP, 2001).

### Defining Roles

Clearly one of the fuzziest areas to many faculty are the understandings of the roles of faculty and support staff in the creation of online learning resources. In general, the administration at most institutions focus on the commitment of the faculty member to the institution, suggesting that it is a normal part of their job to create online learning materials and that they should not expect either ownership or additional pay, though they should be given the tools to enable the creation process. On the other hand, based on a history of textbooks and prior use of course materials in workshops, consulting, mini-courses, classes on tape etc, the faculty member understands the course as a basic unit owned by them. It is their content knowledge, their creation and has typically been their property in the past. While many institutions have long standing policies indicating that the syllabus for a given course is owned by the university, this is so rarely enforced in terms of mobile faculty or consulting usage that most faculty are unaware of such policies where they exist. In essence, many faculty see that the institution is there to serve them in their

quest to advance the knowledge in their given field, while the administrators see the faculty as there to serve the advancement of their home institution. The way that one interprets this conflict typically speaks clearly to the sorts of policies that are likely to result. Faculty members typically want very faculty-friendly policies, while administrators are looking for protection for the institution fro m competition in this new cyber-education world.

**How to define substantial?**

Related to the understanding of roles is the subsequent understanding of the term "substantial". This term is used extensively throughout the copyright literature and the resulting copyright policies. The use of substantial university facilities and/or personnel is often one of the most important or even determining factors in sorting out university ownership of courseware. Yet the concept of substantial is far from clearly defined. Partially because of the distinctions in roles discussed above, the concept of substantial resources is extraordinarily open to interpretation. The State University of Pennsylvania system, for example defines it as at least $40,000 per project. This seems like perhaps the clearest definition of substantial that we have found in the literature. In general the term is defined in much more nebulous ways such as the "use" of instructional designers, graphic artists, working with a particular support arm of the university or the like. How much or how little is rarely as clearly defined as it has been at U Penn. However, even with this clear financial figure, still it is unclear precisely how that number is calculated. What "counts" and what doesn't is not as clear as everyone would like. The U Wisconsin has a relatively detailed definition of "substantial" (See Table 1), yet the "extraordinary" use of computing resources remains a nebulous term and therefore unclear in terms of how it will be measured.

Given the varying roles the institutions and individual professors may play in the creation and development of courseware, it is not likely that a single principle of law can clearly allocate copyright interests in all cases (AAUP 1999). Generally the following instruments are deployed to address the courseware copyright issues: individual negotiations and signed agreements between individual university personnel and institutions; collective bargaining agreements between the university and personnel; and university copyright policies (Morgan, 2000). Many universities (e.g., University of Texas, University of Wisconsin, and Penn State University) have made efforts to develop a courseware policy to provide a framework on how to address courseware copyright. Generally three models of ownership are applicable, i.e. university ownership, university personnel ownership and joint ownership. The most common factors used to determine ownership include, but are not limited to the following: (1) the conditions under which the courseware is developed; (2) the scholarly nature of the product; (3) the commercial character of the work; and (4) the scope of employment.

**Characteristics of AAU (1999) Model**

The current debate on whether to treat courseware as traditional textbook or as patentable innovations, as AAU (American Association of Universities) interprets (AAU, 2001), focuses only on the product, and AAU calls for a shift of attention from the product to the process when addressing courseware related copyright issues. The AAU model primarily represents the interests of the institution, or the administrators within the institution. AAU (1999) argues that courseware is a "collaborative creation" at a university. Based on this assumption, AAU further proposes that "the university should own the intellectual property that is created at the university by faculty, research staff, and scientists and with substantial aid of its facilities or its financial supports." (AAU 1999).

Being very aware of how difficult it could be due to the complexity of new media products, AAU still proposes that generally applicable formulas should be available to allocate the sharing of returns on digital media products among individual faculty, departments, schools and the university.

For the products that do not rely on the university resources and not for use at the university (e.g. in courses), the university may not claim interests in them, yet the definition of "reliance on university resources" remains less than completely defined. Here is raised a particularly interesting set of questions. While it may be clear to many faculty that the use of $40,000 or more of university resources justifies university ownership of courseware, if the faculty member does the work on his or her own time, then it would seem intuitively obvious that the university ought not to interfere with the use of these materials. This is particularly the case if the materials are not in substantial overlap with the faculty members' duties at the university. However, university administrators are concerned about increases in competition for almost any online product that a faculty member at their institution may produce for a mass market. From the institution's perspective, if people can gain access to famous faculty members online cheaply, or potentially cheaper than through their own university tuition and fees, then what could compel them to spend more? And then what protects the university under those circumstances from a substantial

loss of income because the faculty member is essentially competing against his or her own institution. We will revisit this question in more depth during the final section of this paper.

**Portability of intellectual property**

AAU questions if courseware should be treated differently from patented discoveries, which belong to the university and are not portable with the faculty who invent them. Here we sense the blurred distinction between teaching and research, knowledge and products. The patent for an invention remains with the university who is granted ownership in the traditional custom, yet courseware is not a simple product, it is more likely to be a representation of knowledge and scholarly thinking, which is always expected to be continuously constructed through the journey of delivery as well as constant updates. It is potentially dangerous to view courseware as a one-time invention and thus to limit the portability of it. Also the importability, if defined in university courseware policy as suggested by AAU, will cause cautiousness among faculty members about their academic freedom, and is quite likely to reduce their motivation to design, develop, maintain, or update courseware.

**Characteristics of AAUP Model**

If the AAU model represents the institutional perspective, then the AAUP (American Association of University Professors) model represents the faculty interests. AAUP (2001) proposes an informed allocation of rights between faculty and universities in forms of ownership, control, use and compensation. AAUP (2001) classifies the general projects into three categories: works that are properly considered "made for hire," negotiated contractual transfer, and joint works as defined by the Copyright Act. AAUP (2001) further stresses that regardless of the ownership of the courseware, faculty members should be given rights in connection with future use of courseware that they have been part of in the creation and development. Not only through compensation, faculty should be given the right of "first refusal" in making new versions or at least of the right to be consulted in good faith on re-use and revisions (AAUP, 2001). Those points certainly voice faculty members' concerns and are attempts to protect faculty members' rights as scholars, researchers, authors, and creators while promoting development of courseware. For instructional designers and faculty members this is really important, particularly as regards quality control and academic freedom. The AAUP plan, while it is not as faculty-friendly as some models, certainly represents the interests of faculty and tends to encourage faculty to engage in the creation of online learning materials.

**Three Institutional Policies**

We now turn our attention from models to specific policies. The policies of three institutions (University of Texas, Penn State, and the University of Wisconsin. We chose these three because they have all been recent negotiations and because we believe that they represent significantly different types of institutions. While all are relatively large public institutions, politically they are quite diverse in their histories and past policies.

University of Texas' courseware policy has been recognized as the model for electronic course materials ownership (Farrell, 2001). And the American Association of University Professors uses University of Texas' language as a template for its own policies and guidelines on the matter (AAUP, 2001). Thus the UT policy is perhaps the benchmark that other universities are typically considering as they create their own policies. Penn State after some lengthy debate in the faculty senate has just passed a courseware policy recently. And we think it is very telling to share their view and struggle with this issue. University of Wisconsin is historically a very politically progressive institution, so it would be interesting to see how they dealt with this in comparison to say PSU which is much more corporate in nature and does not have a history of progressive liberal policies.

In the following table we try to summarize the current university courseware policy at Penn State University, University of Texas System, and University of Wisconsin System.

*TABLE 1*

| Ownership Institution | Penn State University | University of Texas System | University of Wisconsin |
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| | | (PSU) | (UTS) | System (UWS) |
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| University ownership | Development conditions | The university initiates the development as a normal duty or special project of a faculty member for which extra compensation is provided<br><br>(applicable to both commissioned courseware and commissioned courseware modules) | Any of the following:<br><br>Products are created within the scope of employment<br><br>Using UTS time, facility or state financial support<br><br>Commissioned by the university of a component institution, either as a contract or work for hire<br><br>Research supported by federal funds or third party sponsorship | Condition 1: with "substantial" institutional support or involvement<br><br>In such cases the university system may assert ownership or other property interests, which should be addressed through specific agreements with the authors and producers of the materials (University of Wisconsin System, 1997, p1)<br><br>Condition 2:<br>*As assigned duty of employment*<br><br>Condition 3: pursuant to a work-for-hire agreement |

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| | Allocation of other rights | Generally, sale or use of courseware/ courseware modules in areas that substantially compete (how is it defined remains unclear) with PSU is not allowed without prior approval.<br><br>For commissioned courseware:<br>Written agreement between university personnel and the university prior to the project starts will establish the extent to which the materials may be used in derivative works published outside PSU and will also formalize the relationship with authors outside PSU, if any, and the procedure for the use of existing materials.<br><br>If distributed outside of PSU, authors will receive 50% of royalty or other consideration received by the university<br><br>For commissioned courseware modules:<br>University give proper credit to author(s). | | For Condition 1: Subject to a written agreement between U personnel and chief administrative officer of the institution involved to determine copyright and ownership<br><br>For condition 2(assigned duty):<br>U owns all rights, including copyrights and royalty and fees, unless a contrary agreement reached prior to the beginning of the project specifies otherwise.<br><br>For condition 3 (work for hire):<br>U receive all rights, including royalties and fees, and a written work-for-hire agreement shall be executed<br><br>Fair payment shall be made to the author of the copyrightable instructional materials under the work-for-hire agreement |
| Definition of substantial | | | | Released time from regularly assigned duties;<br><br>direct investment of funds or staff;<br><br>purchase of special equipments;<br><br>use of multimedia production personnel and facilities;<br><br>extraordinary use of computing resources<br><br>(University of Wisconsin System, 1997, footnote 3) |

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| U Personnel ownership | Development conditions | University personnel initiated, noncommissioned courseware and courseware modules which do not compete with any PSU programs<br><br>Yet: the use of university resources to make university-personnel-owned courseware modules should use care to ensure that applicable copyright laws and policies are followed.<br><br>No use of university resources, equipment, support staff, materials is allowed | General rule: author is the owner<br><br>University of Texas System intellectual property policy permits faculty ownership of scholarly, artistic, literacy, musical and educational materials within the author's field of expertise.<br><br>Product unrelated to university personnel's job responsibilities and no more than incidental use of UTS resources<br><br>Invention that has been released to the inventor<br><br>Intellectual property is embodied in a professional, faculty, researcher or student-authored scholarly, artistic, musical, literary or architectural work in the author's field of expertise | No or minimal University support or involvement<br><br>"Minimal", as used in this policy, includes the use of university lab or equipment but does not include release time from regularly assigned duties. (University of Wisconsin System, 1997, footnote 2)<br><br>it further defines "author", who has solely ownership for courseware produced under the above condition, as "creators of instructional materials...may include faculty, staff or students who, as a regular part of the instructional program, become participants in the creation of copyrightable materials" (University of Wisconsin System, 1997, footnote 4). |

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| | Allocation of other rights | Control and use of personnel initiated courseware modules at no or minimum cost remain with the author(s)<br><br>University claims royalty-free nonexclusive right to use the personnel-initiated noncommissioned courseware in the university program<br><br>Use of university-personnel-owned courseware in the university educational programs will only be allowed under the university's supervision.<br><br>Courseware provided at no or minimum cost can be supervised at the department level.<br><br>courseware modules provided at minimum cost can be supervised at the department level<br><br>Sale or use of university-personnel-owned courseware that compete substantially with PSU is not allowed without prior university approval | In case of educational materials that involves significant institutional resources, UTS retains rights, for example, to use the work and recover its investment.<br><br>University personnel owners must share benefits with the UTS from commercializing a UTS invention released to him/her, or of the work embodying the intellectual property required significant resources contribution from the UTS or s component to create or develop the intellectual property (parties should execute an agreement regarding sharing before the project starts). | |

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| Jointly ownership | Development conditions | | Multimedia courseware and distance learning materials are very likely to be jointly developed and thus protected by joint ownership.<br><br>When the university personnel's expression is added to a faculty member's contribution, it is then considered jointly-authored work, and owned by the university and faculty member.<br><br>When substantial UTS resources are used in the development of a courseware, the university may claim joint ownership. | |
| | Allocation of other rights | | Written agreements among parties involved prior to the project starts is recommended to clarify the relationships and rights. | |
| External /extramural support | | We only find policy regarding sponsored inventions(PSU, 2001) but nothing about sponsored courseware policy | | Agreement with the extramural sponsor shall be considered in determining the copyright and ownership rights of the parties. |
| Claims on interest in traditional course-related materials | | Not specifically mentioned in current courseware policy yet no evidence that the university would claim for ownership for traditional course materials | Not specifically mentioned in current courseware policy yet no evidence that the university would claim for ownership for traditional course materials | Does not assert interests in materials resulted in traditional teaching, research and scholarly activities |

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| remarks | Conflict of interest/commitment is defined as: for personal financial gain | Written agreement among parties prior to the beginning of the project is recommended | Written agreement among parties prior to the beginning of a project is highly recommended to clarify rights and responsibilities of each party involved.<br><br>responsible individuals are responsible for copyright-related clearance, waivers, agreement, etc.<br><br>The policy encourages internal use and sharing based on agreements developed under this policy, and charges for internal use should be limited to actual, direct cost.<br><br>Release to external distribution should be negotiated between the institution and the author.<br><br>Revision or withdrawal: Shall not be altered or revised without consultation with the author<br><br>When contrary to recommendation of the author, use, or authorization for use by others shall not be advertised or presented as the work of that author, except appropriate acknowledgement of the author's original production<br><br>Author shall be offered opportunity for revision.<br><br>When considered for different uses than the original ones, author shall be consulted. |

**University of Texas System Courseware Policy**

University of Texas System (UTS)' standards automatically grant ownership of scholarly, electronic learning materials to authors who create them, reinforcing the traditional presumption for scholarly writings, books and teaching materials in universities.

As Georgia Harper, section manager for intellectual property, office of general counsel UTS points out (Farrell, 2001), "Faculty certainly own their course material in a traditional environment, and so to change it — to take away something they and we believe they own — would have precipitated an immense struggle." And the merit of UTS policy is that it recognizes the presumption of faculty ownership of work they create, and faculty members feel secured (Farrell, 2001). To keep a balance between the faculty members and the university, UTS policy recognizes faculty members as owner of software and other materials they create, and allows the university to reserve the right to recover cost if significant university resources have been used in the development process. Now, as a general rule, teaching materials created by faculty members, regardless of the medium, leave with the faculty creators if they leave the university (Farrell, 2001).

According to UTS policy, university personnel ownership is granted when courseware is unrelated to employee's job responsibilities AND is developed with no more than incidental use of system resources. Professional-, faculty-, researcher-, or student-authored scholarly, educational, artistic, musical, literacy or architectural work in the author's field of expertise, unless is for hire, or required to, or commissioned by the UT system, will be granted university personnel ownership as well. In case of substantial use of institutional resources, the university retains rights to use the work and recover its investment, from royalty, for example, and may claim joint ownership.

The UTS policy also points out that multimedia courseware products and distance learning materials, since are more than often jointly developed, are very likely to be jointly owned by the university personnel and the university.

**Penn State University Courseware Policy**

After some lengthy debate, the faculty senate at PSU passed an administration-friendly policy which was promptly accepted without revision by the university president. The senate debate did raise many concerns for some faculty, but the bulk of faculty felt they would not be affected by the new policy and were willing to work with the administration to protect the institution from outside competition.

As the chair of the courseware copyright committee stated, one of the purposes of the efforts is to protect Penn State, a large traditional higher education institution from the commercial competitors such as the University of Phoenix.

The policy basically allows that the university has copyright ownership on online courses whenever the university initiates the development as a normal duty or special project of a faculty member for which extra compensation is provided.

The policy claims that for non-commissioned courseware, the university makes no claim to copyright ownership, however, it DOES claim the royalty-free, non-exclusive right to use the courseware in any university programs. Faculty have no right of first refusal. This part of the policy certainly does not incline faculty members to try to create non-commissioned online courses particularly in combination with the conflict of commitment clause discussed below.

In cases that the courseware is a full replacement of a university educational program, the use of such software is allowed only under university supervision and any courseware module that imposes a cost to students also requires university approval.

In order to protect the university from competition, faculty members are not allowed to create online courses for sale to private online institutions, corporations, workshops, or any other form which would in any way compete with Penn State. One important thing to understand about this part of the policy, called conflict of commitment clause, is that it also applies to areas far from the faculty members' duties to the university. In other words a Shakespearean scholar who chooses to create a course on gardening might run aground of this policy because Penn State, being a wholely comprehensive university, has an agricultural program that looks at gardening. Thus, if a faculty member decides, on their own, to create an online course, it may not in any way compete with PSU, if it does, it is not allowed without prior permission. So, a non-commissioned work is owned by the author, but PSU maintains royalty free non-exclusive right to utilize the materials and the faculty member is not likely to be able to sell the materials outside as it may be considered a conflict of commitment. In this case, ownership is not particularly advantageous to most faculty members which has caused some of them to chill to the idea of engaging in online course development.

In all cases written agreement signed by both the university and faculty members are recommended at the start of the project development.

**University of Wisconsin System Courseware Policy**

The UWS policy, as stated in the background (University of Wisconsin System, 1997, p1), was developed to address the increased institutional involvement in development of copyrightable instructional materials. It was thus written with special focus on courseware developed with substantial support form the university,

University of Wisconsin System claims university ownership on courseware developed as a) work-for-hire or assigned duty or b) with substantial use of institutional support or involvement, and the university reserves all rights including royalty and fees for work-for-hire and assigned duty and rights allocations are subject to written agreement otherwise. UWS has provided a relatively detailed definition for "substantial" which helps to reduce conflict or ambiguous interpretation of the policy.

For courseware that is developed with no or minimal university support or involvement, university personnel ownership is granted. And there are no further specifications on allocations of rights for those courseware products.

For projects developed with external sponsorship, UWS specifically states that agreement with external sponsor shall be considered in determining the ownership and copyrights of all parties involved. Nothing is specified regarding joint ownership.

Interestingly, UWS is the only one among the three institutions we investigated that has specifically addressed the issues of responsibilities of the institution and university personnel, external distributions, revision and withdrawal. The policy specifies that responsible individuals for each project, who are assigned by sponsoring departments, are responsible for copyright-related clearance, waivers, and legal agreements. The policy encourages internal use and sharing based on agreements developed under this policy, and charges for internal use should be limited to actual, direct cost. External distributions may occur as direct rental, sale, or licensing by UWS or as commercial rental, sale or distribution by a third party under agreement for payment of royalties.

Release to external distribution should be negotiated between the institution and the author.

The faculty are clearly to be consulted whenever a course they authored is to be altered or revised. When contrary to recommendation of the author, use, or authorization for use by others shall not be advertised or presented as the work of that author, except appropriate acknowledgement of the author's original production. Author shall be offered opportunity for revision unless he/she declines. When courseware is considered for uses different from the original ones, author shall be consulted. Thus these policies clearly have a high regard for the importance of faculty consultation and consequently academic freedom. The UWS policy shows respect to original authors of courseware, and ensures that authors shall be consulted for revision, alteration and different uses, regardless of ownership.

**Discussion:**

As we outlined above, there are many critical issues associated with current policy making provisions for copyright and courseware ownership. In our view, from our perspective on the front lines of the Penn State debates, the copyright interests are at the nexus of faculty versus administration concerns. For the faculty member there is concern over academic freedom, future use, consulting restrictions, and even job security. For administrators, there is fear of competition, lost revenues, and even *their* own job security. This particular moment of conflict between faculty and administration is an important area for further exploration not only of the impact of specific copyright and courseware ownership issues and policies, but also of the basic working relationships between faculty and administrators—particularly administrators of distance education enterprises on traditional campuses.

What are the specific issues as they relate to the instructional designer? Certainly we have already hinted at one of the biggest concerns for service instructional designers who work with faculty to create online learning materials—that of disincentives for faculty and eventual extinguishment of new online courses to work on…concern over their own job security too. However, a different perspective on the issue might help instructional designers to support a pro-administration stance on copyright policies. If the institution is not able to recoup costs and make a profit on the online enterprise, their jobs are equally endangered. Perhaps the instructional designer can't win either way they go, but they have seen that the most immediate concern is over whether or not faculty will continue to engage in activities that are not financially or institutionally rewarded at the same levels as competing activities such as research, scholarship or private consulting.

If we can separate ourselves from the specific personal interests of each of these groups for their own job and income concerns, we can begin to look at the problem a bit more holistically, perhaps even a bit more

systemically. All of the concerns voiced by all of the different parties are entirely legitimate. The question is what is most in alignment with the goals (historical or contemporary) of the institution of higher education. Advocates of online learning typically cite the importance of democratizing the university (CITE), opening access, and, in the case of land grant public institutions, the mission of outreach as primary goals for institutions of higher education. These are indeed important missions, however, they are very tentatively linked to the interests of administrators which are primarily around competition and income streams. While the rhetoric may focus on democracy, the policies do not. Policies that would focus on democratization would emphasize changes in incentive and reward systems within the university to more fully legitimize online learning development as important to the promotion and tenure process. Policies interested in furthering the reach of the university through online learning would not restrict faculty from offering courses online to any and all comers through whatever outlets were available and willing to invest the necessary resources. Instead, most administration policies assert the right of the institution to own the materials developed, essentially discouraging faculty from participating and lay out conflict of commitment clauses to minimize competition. This is borne of the self-interest of maintaining revenue streams within the institution. This may be seen by faculty as particularly aggregious in the context of large salary increases taken by upper administrators within their home institutions.

On the other hand, the faculty members are rarely working out of purer motives, even from a systemic perspective. The rhetoric many faculty members use to forward the agenda of creating online courses for competing organizations is the importance of academic freedom. The stronger rhetoric is actually founded on the basic goal and mission of higher education. In this case, the mission that is emphasized is the advancement of knowledge throughout the world. The open access through MIT's recent agreement to put learning materials online free of charge is an interesting case of living this mission out. No one is making money off of that initiative unless it is through the good will that is spread by returning to a nobler mission for higher education. It is quite possible that such an open access initiative may engender significant public support for public institutions of higher education, making the entire enterprise far more relevant than it has been for many years. When the mission is seen as advancement of knowledge, and sharing of learning and information as widely as possible, non-compete clauses come up far short and administrator copyright policies appear to be more interested in furthering the goals of a corporation than an educational institution.

**References**


American Association of University of University Professors (AAUP). Draft Statement on Copyright. Washington, D.C.: Author. Retrieved Oct. 20, 2001 from the World Wide Web: http://www.aaup.org/spccopy.htm

Association of American Universities (AAU) (2001). AAU Intellectual Property and New Media Technologies: a Framework for Policy Development at AAU Institutions. A Report to the AAU Digital and Intellectual Property Management Committee by the Intellectual Property Task Force. Retrieved Oct. 20, 2001 from the World Wide Web: http://www.aau.edu/reports/IPReport.html

Bulk, D. L. (1997). Ownership of Electronic Course Materials in Higher Education. CAUSE/EFFECT: A Practitioner's Journal about Managing and Using Information Resources on College and University Campuses. 20 (3), 13-18. Retrieved March 8, 2001 from the World Wide Web: http://www.educause.edu/ir/library/html/cem9734.html

Consortium for Educational Technology for University Systems(CETUS) (1997). Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning. Retrieved March 8, 2001 from the World Wide Web: http://cetus.org/ownership.pdf

Council for Higher Education Accreditation (CHEA) (2000). Distance Learning in Higher Education (http://www.chea.org/)

Daniel, J. S. (1996). Mega-universities and knowledge media: Technology strategies for higher education. London: Kogan Page.

Farrell, J. M. (2001). Policy Seen as Model for E-Course Ownership: At the University of Texas, Faculty Members Own What They Put on the Web. Office.com. Retrieved on March. 8, 2001 from the World Wide Web: http://www.office.com/global/0,2724,55-21830_2,FF.html

Gubernick, L. & Ebeling, A. (1997). "I got my degree through E-mail," Forbes, June 16, 1997.

Hall, J.W. (1995). The Revolution in electronic technology and the modern university: The convergence of means. Educom Review, 30 (4), 1-7.

Heinich, R. (1984). The Proper Study of Instructional Technology. Educational Communication and Technology, 32 (2), 67-87.

Hiltz, S.R. & Wellman, B. (1997). Asynchronous learning networks as a virtual classroom. Communications of the ACM, 40 (9) 44-49.

Morgan, G. (2000). Faculty Ownership and Control of Digital Course Materials. Teaching With Technology Today Newsletter 5(4), January 25, 2000.

Pennsylvania State University (2000). The university faculty senate agenda. Retrieved March 8, 2001 from the World Wide Web: http://www.research.psu.edu/pu/ipreport.pdf

----. (2001). Sponsored Programs Policy Book: Intellectual Property Policies and Procedures. Retrieved on Oct. 20, 2001 from the World Wide Web: http://infoserv.rttonet.psu.edu/spa/ip.htm

Penn State Senate Committee on Research(2001). Courseware Policy (Forensic). Presented at the University Faculty Senate Meeting on Feb. 27, 2001.

Twigg, C. (2000). Who Owns Online Courses and Course Materials? Troy, New York: Rensselaer Polytechnic Institute: Center for Academic Transformation. (http://www.center.rpi.edu/PewSym/mono2.html)

Seltzer, V. C. (1997). On the Horizon: the Intellectual Property Debate. Almanac, University of Pennsylvania, Volume 44, Number (available at: http://www.upenn.edu/almanac/v44/n07/senate.html)

University System of Maryland (2000). Draft Revised Policy on Intellectual Property. (http://ipc.usmd.edu).

University of Texas System (1998). U.T. System Intellectual Property Policy in Plain English. Retried March 8, 2001 from the World Wide Web: http://www.utsystem.edu/ogc/intellectualproperty/ippol.htm
(Official policy available at: http://www.utsystem.edu/ogc/intellectualproperty/2xii.htm)

University of Wisconsin System, (1997). Financial and Administrative Polices: Copyrightable Instructional Materials Ownership, Use and Control (G27). Revised November 24, 1997. Retrieved on Oct. 20, 2001 from the World Wide Web: http://www.uwsa.edu/fadmin/gapp/gapp27.htm

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